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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TESLA, INC., A DELAWARE)	
CORPORATION,)	
)	
PLAINTIFF,)	CASE NO.
)	3:18-CV-00296-LRH-CBC
vs.)	
)	
MARTIN TRIPP, AN INDIVIDUAL,)	
)	
DEFENDANT.)	
_____)	
)	
MARTIN TRIPP, AN INDIVIDUAL,)	
)	
COUNTERCLAIMANT,)	
)	
TESLA, INC., A DELAWARE)	
CORPORATION,)	
)	
COUNTERDEFENDANT.))	
_____)	

C O N F I D E N T I A L

(Pursuant to agreement of counsel, the following
transcript has been designated confidential)

EXPERT DEPOSITION OF JEFFREY H. KINRICH
TAKEN THURSDAY, MAY 9, 2019
LOS ANGELES, CALIFORNIA

Depo Dynamics, LLC
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Reported by Alejandria E. Kate, C.S.R. No. 11897
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1 Q. Sir, the third category of your report is
2 "Stock Price Reaction." Is that correct?

3 (The reporter requested clarification.)

4 MR. FISCHBACH: "Stock Price Reaction."

5 THE WITNESS: Yes.

6 BY MR. FISCHBACH:

7 Q. And this -- at least in terms of numerical
8 size, this is the largest component of your damages
9 analysis; correct?

10 A. Yes.

11 Q. Is it your opinion that Mr. Tripp caused
12 \$167 million of market cap damage to Tesla's stock?

13 A. I cannot reach that conclusion. I believe
14 my information is relevant for a finder of fact
15 combined this calculation with other information
16 and draw some conclusion, but I can't reach that
17 conclusion alone.

18 Q. Is it your opinion that the
19 Business Insider articles published on June 4 and
20 June 6 cost Tesla's stock price to decline?

21 A. I can't reach that conclusion, though I
22 have attempted to rule out other things that would
23 normally be considered as possible causes. And I
24 don't have anything else to rule out at this point.

25 Q. All right. So the -- I think we've

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1 Tesla stock outstanding at the time,
2 this translates into a \$34 million
3 decline in market capitalization over
4 those 19 minutes of trading."

5 Did I read that correctly, sir?

6 A. Yes.

7 Q. Again, are you opining that Tesla's stock
8 price was damaged by Mr. Tripp?

9 A. I'll give you the same answer I did
10 before, which is I am not -- I've attempted to rule
11 out other causes, but I can't conclude that it was
12 caused by Mr. Tripp. I can't conclude it was not,
13 either.

14 Q. Can you tell me what the percentage change
15 in the stock price was during those 19 minutes?

16 A. .07 percent.

17 Q. Okay. I got .067 percent, but you're
18 rounding up a little bit.

19 Have you done any analysis to determine
20 whether or not a .07 percent change in the stock
21 price is a statistically significant movement in
22 the stock price?

23 A. Yes. It would inherently not be, but
24 that's one of the interesting things about this
25 methodology -- not my methodology, but when looking

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1 at stock prices.

2 Because of Tesla's price, to be a
3 statistically significant move, you'd have to move
4 billions of dollars. So if -- let's -- let me give
5 you a hypothetical.

6 If there's something that we agree just
7 because we agree that something affected the stock
8 price, but less than billions of dollars worth, you
9 will not find it to be statistically significant
10 even though we've already agreed that that was the
11 cause of the difference.

12 So the fact that it's not statistically
13 significant does not tell you that it still isn't a
14 cause, nor does it tell you it is a cause.

15 Q. So if, hypothetically Tesla's CEO in
16 August of 2018 put out a tweet that he was thinking
17 of taking the company private at \$420 a share and
18 that caused the market cap to decline by several
19 billion dollars, that would be a statistically
20 significant change in the stock price?

21 MS. LIBEU: Incomplete hypothetical.

22 THE WITNESS: I haven't calculated what
23 level of change is required in Tesla's stock to be
24 statistically significant. I just know it's a lot
25 more than a few million dollars. I used a billion,

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1 but not because I computed a billion.

2 So I can't answer the question as to
3 whether that particular change was or was not.

4 BY MR. FISCHBACH:

5 Q. Okay. But in this case, you'd agree with
6 me that there was no statistically significant
7 change in Tesla's stock price in the final
8 19 minutes of regular trading on June 4; correct?

9 A. I would agree with that and, again, point
10 out that a change of 34 million -- let's say we
11 hypothetically assume that Mr. Tripp or some other
12 cause caused the \$34 million change, that would
13 never be observed as statistically significant even
14 though it's real -- I mean, real in our
15 hypothetical.

16 So that's just one of the characteristics
17 of that kind of methodology.

18 Q. Can you tell me what the overall variance
19 was of Tesla's stock price on June 4 of 2018?

20 A. Not off the top of my head.

21 MR. FISCHBACH: Can we go off the record?

22 MS. LIBEU: Sure.

23 THE VIDEOGRAPHER: This marks the end of
24 Media Number 1 in the continuing deposition of
25 Jeffrey H. Kinrich. We are off the record at

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1 stocks. When the market goes up as a whole, most
2 stocks go up.

3 Here we have a much closer tie and we
4 have -- so we have a direction that there's really
5 nothing more to do an investigation on.

6 If the market had plummeted, I would say,
7 well, maybe that's the cause, not -- I said that
8 poorly.

9 Maybe whatever caused the market to
10 plummet also caused Tesla's stock to plummet. But
11 since I don't have that here, I have an increase,
12 small though it may be, I didn't have to take it
13 any further to know that I've dealt with that
14 possible influence.

15 Q. And sitting here today, you can't tell me
16 that the movement in any of those three indices was
17 statistically significant in the last 19 minutes of
18 trading on June 4, can you?

19 A. No, in fact, I already told you it would
20 be unlikely they would be, and that's consistent
21 with what we'd expect to happen.

22 Q. Once again, you've done no statistical
23 analysis or linear regression analysis to analyze
24 the general correlation between movement of Tesla's
25 stock price and the movement of those three

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1 indices; correct?

2 A. Correct. No need to in this case.

3 Q. And you're saying there's no need to
4 because at least two of the three indices went up;
5 is that right?

6 A. Well, the two relevant ones, yes. The two
7 most relevant ones.

8 Q. You're saying the S&P 500 is not a
9 relevant indices?

10 A. It's less relevant because it's broader
11 and less -- less related to the kind of business
12 that Tesla is in.

13 Q. There's no other relevant indices in
14 making that comparison?

15 A. Not that I've looked at, no.

16 Q. Have you done any analysis to determine
17 how closely Tesla's stock price tracked those three
18 indices throughout the trading day of June 4?

19 A. I did not.

20 Q. And, again, you've performed no type of
21 statistical analysis or linear regression analysis
22 to confirm that the movement of Tesla's stock price
23 should typically track those three indices?

24 A. Nor am I even concluding that. I mean, I
25 didn't attempt to do that because that's not the

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1 it's not going to change my answer. The question
2 doesn't -- I don't understand what that has to do
3 with my prior answer, which is what I think you
4 were responding to.

5 If I'm wrong, you may try it again.

6 BY MR. FISCHBACH:

7 Q. Did the three indices that you identified,
8 did they finish up or down that day?

9 A. I don't know. It wouldn't matter.

10 Q. Why would it not matter?

11 A. For all the reasons I described just a few
12 answers ago, that whatever happens before the
13 19 minutes is sunk, it's moot. If the market
14 skyrocketed or plummeted before then, you don't
15 care. It doesn't affect what is happening at that
16 point.

17 Q. All right. Did you do any analysis to
18 determine whether or not the Tesla stock price
19 correlated with either the NASDAQ or the NASDAQ
20 Automotive Index for, say, June 5 to June 11?

21 A. I did not, nor would it have any
22 relevance. But the answer is no, I did not.

23 Q. So, well, you told me before that looking
24 at what happened before publication was irrelevant;
25 is that right?

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1 A. Yes.

2 Q. Is it your opinion that had that
3 Business Insider article not been published, that
4 Tesla's stock would have remained static at \$296.94
5 for the remaining 19 minutes of the regular trading
6 day?

7 A. No, I can't draw that conclusion.

8 Q. Sitting here today -- well, do you have
9 any opinion as to what Tesla's stock price would
10 have been at the end of regular trading on June 4
11 of 2018 had the Business Insider article not been
12 published?

13 A. I don't think I can answer that question.

14 Q. Well, I'm asking you: Do you have an
15 opinion?

16 A. I don't think I have an opinion. I have
17 information that's consistent with the 20-cent drop
18 being related to the Business Insider article, but
19 it doesn't -- I can't demonstrate that it was
20 caused by it.

21 Q. Have you done any comparison -- strike
22 that.

23 Have you done any comparison between
24 Tesla's stock -- strike that.

25 Have you done any comparison of the

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1 Q. Do you have any analysis whatsoever to
2 support that conclusion?

3 A. Which one, the -- the -- in the
4 hypothetical or the conclusion that the 20 cents
5 was caused by the article itself?

6 Q. In the hypothetical.

7 A. Yes. That's how -- that's the natural
8 result of the assumption that the Business Insider
9 article caused the 20-cent depression in the stock.

10 Q. That's an assumption you're making;
11 correct?

12 A. Well, I'm not making the assumption.
13 Maybe we're speaking past each other. It was the
14 hypothetical that we were talking about.

15 Q. Correct --

16 (Speaking simultaneously.)

17 THE WITNESS: Within the hypothetical, I
18 have a basis for it because it is the basis for the
19 hypothetical. So I'm confused as to where the
20 confusion is.

21 BY MR. FISCHBACH:

22 Q. Just so I'm clear, you have no opinion as
23 to what the Tesla stock price would be at the
24 beginning of regular trading on June 5 had the
25 Business Insider article not been published on

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1 June 4; correct?

2 A. Correct. Unless one makes an assumption
3 about whether -- about causation that I've already
4 told you I'm not making on June 4.

5 Q. All right. Going back to the June 6th
6 article, paragraph 22 of your report, you state
7 that:

8 "Given the 170.5 million shares
9 of Tesla stock outstanding, this
10 translates into a \$134 million decline
11 in market capitalization over those 40
12 minutes of trading."

13 Did I accurately state that portion of
14 your report?

15 A. Yes.

16 Q. So, again, Tesla closed at \$319.50 on
17 June 6th at the end of regular trading; correct?

18 A. Correct.

19 Q. What was the percentage change during that
20 last 40 minutes of trading?

21 A. What paragraph are you reading from?

22 Q. Paragraph 22. And I'm also looking at
23 Exhibit 6 to your report as well.

24 A. I was on Exhibit 6, but it didn't have the
25 percentage, so it's in paragraph 22. It was a

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1 Q. Go ahead.

2 A. I think you're saying is controlling for
3 the movement of the market indices, did the Tesla
4 stock move in a statistically significant fashion.

5 Q. Yes.

6 A. And there, I've already answered, as I
7 said, that the answer is probably not. And because
8 in order for Tesla's stock to move in a
9 statistically significant fashion, the movement has
10 to be much larger.

11 So a small movement that was actually
12 caused by an underlying event would never be
13 statistically significant even though it's real.
14 And that's -- that's where we are in this kind of a
15 relatively small influence.

16 Q. Would you agree with me that if there was
17 a statistically significant movement in the stock
18 price, that would, by definition, exclude other
19 potential causes?

20 A. No.

21 Q. Why don't you agree with that statement?

22 A. Because you can't tell just from the
23 mathematics whether you have isolated one cause or
24 if there are multiple causes.

25 For example, in a -- take a different

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1 Q. Thank you.

2 And with the June 4 analysis, you looked
3 at these three indices and you also looked for any
4 other possible news stories involving Tesla during
5 that last 40 minutes of trading?

6 A. Correct.

7 Q. Did you find any news stories?

8 A. No.

9 Q. And that was the only thing --

10 (Speaking simultaneously.)

11 THE WITNESS: I'm sorry. There were news
12 stories, there was nothing that was new news. In
13 other words, somebody may say something that was
14 already well known, that's not new news.

15 BY MR. FISCHBACH:

16 Q. Okay. Well, let me ask you this: Is
17 the -- is the information in the Business Insider
18 article on either day, was that new news?

19 A. I believe so. I mean, it was new
20 information whether it's -- I mean, if you're
21 asking if it's fake news or not, that's a different
22 issue.

23 Q. No, I'm asking whether to not there's --
24 the information in those two Business Insider
25 articles, had any information similar to that been

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1 A. Not with multiple events occurring.
2 That's why what I did for this case is I looked to
3 see if there were other intervening events during
4 those 19 minutes or the 40 minutes, and there were
5 not.

6 Q. All you looked at were news articles and
7 three indices; correct?

8 MS. LIBEU: Objection. Misstates prior
9 testimony.

10 THE WITNESS: Well, those were the outside
11 sources of information I looked at, yes.

12 BY MR. FISCHBACH:

13 Q. All right. But you didn't do any analysis
14 as to whether or not there was an abnormal trading
15 volume in the last 19 minutes of trading on June 4,
16 did you?

17 A. That's probably not true. I didn't do
18 anything specific for that. But I was observing
19 trading volumes, and if there had been something
20 odd, I would have noticed.

21 So I think I probably did without making
22 it a point of investigation.

23 Q. Is it your testimony, then, that you
24 didn't see anything abnormal about trading volume
25 of Tesla stock in the last 19 minutes of trading on

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1 June 4?

2 A. I don't remember seeing anything.

3 Q. Do you remember seeing anything abnormal
4 about the trading volume of Tesla stock during the
5 last 40 minutes of June 6th?

6 A. I do not.

7 Q. Going back to the Elon Musk tweet example.
8 Two days after the tweet on August 9th,
9 the stock price had gone down \$27.12 to \$352.45.

10 Are you aware of that?

11 A. Again, I'm not aware of any particular
12 price, as I sit here. I know -- you know, I was --
13 I was there at the time -- I don't mean I was there
14 at Tesla, but, I mean, I went through those days
15 and I remember seeing things in the news.

16 But I do not remember any particular stock
17 price, as I sit here today.

18 Q. Would you consider a \$27.12 diminution in
19 Tesla stock price over two days to be statistically
20 significant?

21 A. Compared to what?

22 Q. Compared to zero.

23 A. My suspicion without doing an analysis is
24 it probably is statistically different than zero,
25 but I don't know that with certainty without doing

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1 right?

2 MS. LIBEU: Objection. Misstates the
3 report.

4 THE WITNESS: I don't know what his
5 intention was. I -- but if one is investigating a
6 question of materiality, then one wants to measure
7 what the typical level of volatility or change is.

8 Since that wasn't the question I was
9 attempting to answer, that wasn't an inquiry I was
10 pursuing.

11 BY MR. FISCHBACH:

12 Q. You have no opinion in this case regarding
13 the stability of Tesla's stock price following the
14 publication of the two Business Insider articles;
15 is that correct?

16 A. I'm not sure I understand what you mean by
17 "stability." Well, I don't know what you mean by
18 stability. I am sure I don't know.

19 Q. Do you have any opinion as to whether or
20 not Tesla's stock price demonstrated an unusual
21 level of volatility following the publication of
22 either Business Insider article?

23 A. I do not have an opinion on that.

24 Q. Do you remember a case that you served as
25 an expert in called Unitherm Food Systems, Inc

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1 as the stock price, for example.

2 Q. Would you consider your work in this case
3 an event study?

4 A. It's in the same neighborhood, but it
5 is -- because I'm not concluding about causation, I
6 would say it probably isn't quite an event study,
7 but it certainly has some characteristics that are
8 related.

9 Q. I will represent to you, Mr. Kinrich, that
10 the Tesla stock price closed at \$332.10 on June 11.

11 Do you have any reason to dispute that?

12 A. Since I don't know the answer, I have no
13 reason to dispute it no matter what number you gave
14 me.

15 Q. And in this case, you used two specific
16 windows: A window of the last 19 minutes of
17 trading on June 4 and the last 40 minutes of
18 trading on June 6th; is that correct?

19 A. Yes.

20 Q. If the stock price by June 11 was \$332.10,
21 if you used a window of, say, June 4 to June 11,
22 then there would be no damages according to your
23 methodology; is that right?

24 MS. LIBEU: Incomplete hypothetical.

25 You can answer.

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C E R T I F I C A T E

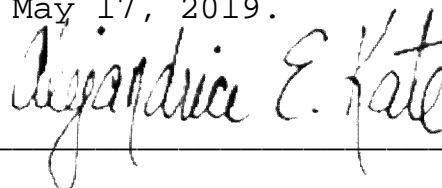
I, ALEJANDRIA E. KATE, a certified court reporter in the State of California, do hereby certify:

That the foregoing deposition of JEFFREY H. KINRICH was taken before me at the time and place therein set forth, at which time the witness was duly sworn by me;

That the testimony of the witness and all colloquy and objections made at the time of the deposition were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof;

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

In witness whereof, I have subscribed my name and signature this date, May 17, 2019.



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